IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.105 OF 2007
WITH
CIVIL APPLICATION NO.155 OF 2007

Smt.Kalavati Suresh Abnave. ..Appellant.
V/s.
Municipal Corporation of Gr.Mumbai. ..Respondent.

Mr.S.K.Chaurasia i/b A.M.Saraogi for appellant.

Mr.Geeta Joglekar for Respondent-BMC.

CORAM: A.M.KHANWILKAR,J
DATE : FEBRUARY 21, 2007.

P.C. :

1. Heard counsel for the parties.

2. Inspite of enough opportunity given to the counsel for the appellant, except the document at pages 60 to 63, no other official document has been brought to my notice to establish the fact though prima facie about existence of the structure prior to 1/1/1995. The documents at pages 60-63 are electricity bills which pertains to July, 2001, May, 2004, November, 2000 and September, 2000 respectively. These documents will be of no avail to the appellant.

3. The appellant would then rely on the copy of the affidavits which are part of the record. However, even those affidavits does not improve the

situation to establish the fact of existence of the structure in question before 1/1/1995. As there is no other official documentary evidence on record to support the claim about the existence of the structure prior to 1/1/1995, the trial Court has rightly rejected the grant of ad-interim relief.

4. Reliance was placed by the learned counsel on the unreported decision of this Court in the case of Bapuji Stall Owners Association V/s. Bombay Municipal Corporation date 20th January, 2006 in Appeal From Order No.706 of 2002. This decision is of no avail to the appellant. The appellant having failed to establish the factum of existence of the structure prior to 1/1/1995 cannot claim any protection from the proposed action of the Corporation.

5. Counsel for the Corporation has contended that in fact, all the structures on the road side have been demolished in the past, which position is supported by the record.

6. Suffice it to observe that the appellant having failed to produce any contemporaneous evidence to establish existence of the structure prior to 1/1/1995, will not be entitled for protection in

respect of the suit structure. Hence this appeal should fail. The same is dismissed.

7. In view of this order, civil application disposed of accordingly.